

CITY OF TIGARD, OREGON

RESOLUTION NO. 02-51

A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING AN AMENDMENT TO MUNICIPAL COURT JUDGE MICHAEL J. O'BRIEN'S PERSONAL SERVICES CONTRACT

WHEREAS, since 1988 the City has entered into personal services contracts for the municipal judge function; and

WHEREAS, in 2001 Michael J. O'Brien entered into a two-year contract with the City to serve as Municipal Judge; and

WHEREAS, Judge O'Brien's two year contract allows for adjustment in the compensation in the second year of the contract; and

WHEREAS, caseload increased significantly last fiscal year and it is anticipated the caseload will remain at the same level this fiscal year; and

WHEREAS, a monetary adjustment is in order to compensate the Judge fairly;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The amended personal services contract is entered into by mutual agreement of the parties as set forth in the attached Exhibit "A". This contract is retroactive to July 1, 2002 and shall repeal and replace all prior verbal and written agreements.

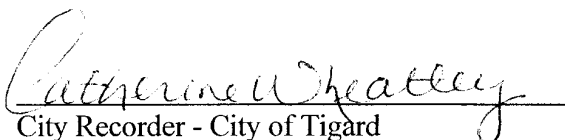
SECTION 2: This resolution is effective immediately upon passage.

PASSED: This 27th day of August 2002.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

RESOLUTION NO. 02-51

CITY OF TIGARD, OREGON

AMENDED PERSONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into this 1st day of July, 2001 by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called CITY, and Michael J. O'Brien, hereinafter called CONTRACTOR.

WITNESSETH

WHEREAS, CITY has need for the services of a company with a particular training, ability, knowledge, and experience possessed by CONTRACTOR, and

WHEREAS, City has determined that Michael J. O'Brien is qualified and capable of performing the professional services as CITY does hereinafter require, under those terms and conditions set forth:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. SERVICES TO BE PROVIDED:

- a) Preside over civil infraction, criminal, traffic, and parking case arraignments, trials, and hearings;
- Oversee the Municipal Court judicial function;
 - Update court orders and rules as needed;
 - Research and additional projects as agreed to by the Contractor and Court Administrator.

2. EFFECTIVE DATE AND DURATION:

This Agreement shall become effective upon July 1, 2001 and shall expire, unless otherwise terminated or extended, on June 30, 2003. Compensation will also be reviewed at the end of the 01-02 fiscal year to determine what adjustment is appropriate. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION:

CITY agrees to pay CONTRACTOR ~~not to exceed \$25,285.00~~ , in 2002-2003, \$30,000.00 for performance of those services described herein, which payment shall be based upon the following applicable terms:

- a. Payment by CITY to CONTRACTOR for performance of services under this Agreement includes all expenses incurred by CONTRACTOR, with the exception of expenses, if any, identified in this Agreement as separately reimbursable.

- c. Payment by CITY shall release CITY from any further obligation for payment to CONTRACTOR, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- d. It is contemplated by the parties that the court's caseload may increase substantially due to the implementation of photo enforcement, juvenile or other programs. In that event, parties agree to negotiate an appropriate adjustment in CONTRACTOR's method or rate of compensation or both.
- e. CONTRACTOR shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- f. The CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT:

CITY shall be the owner of and shall be entitled to possession of any and all work products of CONTRACTOR which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by CONTRACTOR prior to termination of this Agreement by CONTRACTOR or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION:

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If CITY agrees to assignment of tasks to a subcontract, CONTRACTOR shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by CITY of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and CITY.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

CONTRACTOR certifies that:

- a. CONTRACTOR acknowledges that for all purposes related to this Agreement, CONTRACTOR is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of CITY is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that CONTRACTOR is found by a court of law or any administrative agency to be an employee of CITY for any purpose, CITY shall be entitled to offset compensation due, or to demand repayment of any amounts paid to CONTRACTOR under the terms of this Agreement, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as a result of said

finding and to the full extent of any payments that City is required to make (to CONTRACTOR or to a third party) as a result of said finding.

- b. The undersigned CONTRACTOR hereby represents that no employee of the CITY, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

CONTRACTOR and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- c. CONTRACTOR is not an employee or agent of the CITY as those terms are used in ORS 30.265.

7. INDEMNIFICATION:

CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by CITY shall not operate as a waiver or release.

City will defend and indemnify CONTRACTOR for all actions taken while CONTRACTOR is performing the responsibilities of municipal court judge as provided in this agreement to the extent of the City's obligation pursuant to ORS.

8. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS.

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail as follows:

Nadine Robinson, CITY OF TIGARD
Tigard Municipal Court
13125 SW Hall Blvd.
Tigard, Oregon 97223

CONTRACTOR
Michael J. O'Brien

CONTRACTOR

Michael J. O'Brien

P.O. Box 711

Forest Grove, OR 97116

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

9. **MERGER:**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

10. **PROFESSIONAL SERVICES:**

The CITY requires that services provided pursuant to this agreement shall be provided to the CITY by a CONTRACTOR which does not represent clients on matters contrary to CITY interests. Further, CONTRACTOR shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to CITY interests.

Should the CONTRACTOR represent clients on matters contrary to CITY interests or engage the services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to CITY interests, CONTRACTOR shall consult with the appropriate CITY representative regarding the conflict.

After such consultation, the CONTRACTOR shall have 30 days to eliminate the conflict to the satisfaction of the CITY. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 13 (b - iii) of this agreement.

11. **TERMINATION WITHOUT CAUSE:**

At any time and without cause, either party shall have the right to terminate this Agreement by giving not less than 30 days notice, in writing, to the other party. If CITY terminates the contract pursuant to this paragraph, it shall pay CONTRACTOR for services rendered to the date of termination.

12. **TERMINATION WITH CAUSE:**

- a. CITY may terminate this Agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by CITY, under any of the following conditions:

- i. If CITY funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- iii. If any license or certificate required by law or regulation to be held by CONTRACTOR, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- b. CITY, by written notice of default (including breach of contract) to CONTRACTOR, may terminate the whole or any part of this Agreement:
 - i. If CONTRACTOR fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - ii. If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from CITY, fails to correct such failures within ten (10) days or such other period as CITY may authorize.

The rights and remedies of CITY provided in the above clause related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If CITY terminates this Agreement under paragraph (b), CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by CITY due to breach of contract by CONTRACTOR. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS:

CITY shall have access to such books, documents, papers and records of CONTRACTOR as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. FORCE MAJEURE:

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. NON-WAIVER:

The failure of CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. CONTRACTOR also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

17. ERRORS:

CONTRACTOR shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. EXTRA (CHANGES) WORK:

Only the Contract Administrator may authorize extra (and/or changes) work. Failure of CONTRACTOR to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and CONTRACTOR thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. WARRANTIES:

All work shall be guaranteed by CONTRACTOR for a period of one year after the date of final acceptance of the work by the owner. CONTRACTOR warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve CONTRACTOR from liability under warranties contained in or implied by this Agreement.

20. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. GOVERNING LAW:

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH APPLICABLE LAW:

CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279.310 to 279.320.

23. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

25. COMPLETE AGREEMENT:

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. CONTRACTOR, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by its duly authorized undersigned officer and CONTRACTOR has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD

By: Elizabeth Newton for Miriam A. Monahan
City Manager

CONTRACTOR

By: _____
Contractor/Name/Title